

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA 07-612

CAROLYN WHITMORE

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HEALTH & HUMAN SERVICES

APPELLEE

Opinion Delivered FEBRUARY 27, 2008

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, SIXTH
DIVISION, [NO. CV2006-4723]

HONORABLE TIMOTHY DAVIS FOX,
JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

This is the second appeal concerning appellant Carolyn Whitmore and her daycare. In the first appeal, appellant appealed the revocation of her probationary license to run the daycare, which we affirmed in an unpublished opinion. *See Whitmore & Carolyn Child Care v. Ark. Dep't of Human Servs.*, CA07-86 (Nov. 7, 2007). Now on appeal is the administrative decision cancelling appellant's child-care system participant agreement and finding that appellant submitted fraudulent billing statement charges totaling \$1060. We have reviewed this case under the proper standards, and we affirm.

Review of administrative agency decisions, by both the circuit court and appellate courts, is limited in scope. *Ark. Dep't of Corr. v. Bailey*, ___ Ark. ___, ___ S.W.3d ___ (Jan. 25, 2007). The standard of review to be used by both the circuit court and the appellate court is whether there is substantial evidence to support the agency's findings. *Id.* Thus, the review

by appellate courts is directed not to the decision of the circuit court, but rather to the decision of the administrative agency. *Id.* The circuit court or appellate court may reverse the agency decision if it concludes:

(h) [T]he substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) In excess of the agency's statutory authority; (3) Made upon unlawful procedure; (4) Affected by other error or law; (5) Not supported by substantial evidence of record; or (6) Arbitrary, capricious, or characterized by abuse of discretion.

Ark. Code Ann. § 25-15-212(h) (Repl. 2002). An administrative agency's interpretation of its own regulation will not be overturned unless it is clearly wrong. *Dukes v. Norris*, ___ Ark. ___, ___ S.W.3d ___ (May 3, 2007). We have recognized that administrative agencies, due to their specialization, experience, and greater flexibility of procedure, are better equipped than courts to analyze legal issues dealing with their agencies. *Id.*

Appellant's first contention is that while she could not and did not provide adequate attendance records when she was asked on June 29, 2005, by Department of Health and Human Services (DHHS) personnel, months later she offered additional documentation to support her billing that day, which was refused. She contends that this refusal was unfair, arbitrary, and capricious. Thus, she argues, it was error to revoke her participant agreement. Appellee DHHS counters that pursuant to the child-care participant agreement, appellant was required to provide attendance records upon request within one hour. When requested, appellant provided one page that day, but in October 2005 she attempted to present a purported second-page attendance record for June 29, 2005. The administrator of the compliance unit testified that his practice was not to accept additional attendance records after

the review and discrepancies are determined, in any case. This provided a basis to find non-compliance, and thus provided grounds to cancel their agreement. Given the agreement's terms, and given the standing procedure in investigating those claims, we cannot agree that the agency's determination was arbitrary and capricious.

The other argument on appeal is that the agency finding, that appellant submitted fraudulent billing, is not supported by substantial evidence. We disagree. The administrative order provides an extensive set of findings of fact and conclusions of law to support the ultimate outcome. The findings recited the evidence that appellant was asked for her attendance records in accordance with their agreement, and that she provided only one page that did not support the billing she submitted. In addition, it was found that appellant billed on days when her daycare facility was closed and on days when her license was suspended. The administrative hearing officer considered appellant's argument that these were merely unintentional mistakes, but that argument was rejected by the tribunal, noting that the billing errors were for entire days and were in close proximity, evidencing an intentional misrepresentation. We give due regard to the opportunity of the fact finder to judge the credibility of the witnesses. *J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997). Where there are inconsistencies in the testimony presented, the resolution of those inconsistencies is best left to the fact finder. *Dinkins v. Arkansas Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001).

The agency decision is affirmed.

GLADWIN and HEFFLEY, JJ., agree.